

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CHARLES MAYFIELD,

Plaintiff,

Case No. 13-10341

Honorable Thomas L. Ludington

v.

RICHARD MILES et al.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING
DEFENDANTS' MOTIONS TO DISMISS, DISMISSING PLAINTIFF'S CLAIMS
AGAINST WARDEN SCUTT WITH PREJUDICE, AND DISMISSING ALL OTHER
CLAIMS WITHOUT PREJUDICE**

Charles Mayfield was diagnosed with multiple myeloma, a form of bone cancer, while incarcerated at the G. Robert Cotton Correctional Facility. According to Mayfield, his pleas for medical treatment—including access to his diagnosing physician—have gone unanswered. On January 29, 2013, pursuant to 42 U.S.C. § 1983, Mayfield filed a *pro se* prisoner civil rights action against various employees of the G. Robert Cotton Correctional Facility. His claims include allegations of deliberate indifference to his serious medical needs and violation of his Fourteenth Amendment right to due process. The five Defendants that remain in the case (Richard Miles, Debra Scutt, Keff, Joyce Hunter, and Dawn Lybarger) filed a total of three motions to dismiss (Miles, Keff, and Lybarger's motion coming together). *See* ECF Nos. 18, 23, 26. Those motions, and Mayfield's underlying complaint, were referred to United States Magistrate Judge Mark A. Randon pursuant to 28 U.S.C. § 636(b)(1).

On September 9, 2013, Judge Randon issued a report recommending the Defendants' motions be granted, Mayfield's claims against Warden Scutt be dismissed with prejudice, and his other claims be dismissed without prejudice. Judge Randon also recommended that Mayfield be given time to file "a motion for leave to amend with an attached Proposed Amended Complaint[.]"¹ See Report & Recommendation 8, ECF No. 32. If Mayfield fails to do so, Judge Randon recommends that "all of his claims be dismissed with prejudice." *Id.* (emphasis omitted). As of today's date, no party has filed any objections to Judge Randon's report and recommendation. The election to not file objections to the report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that the Judge Randon's report and recommendation, ECF No. 32, is **ADOPTED**.

It is further **ORDERED** that Defendant Scutt's motion to dismiss, ECF No. 18, is **GRANTED**.

It is further **ORDERED** that Defendant Hunter's motion to dismiss, ECF No. 23, is **GRANTED**.

It is further **ORDERED** that Defendants Miles, Keff, and Lybarger's motion to dismiss, ECF No. 26, is **GRANTED**.

It is further **ORDERED** that Mayfield's claims against Defendant Scutt are **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the other claims in Mayfield's complaint, ECF No. 1, are **DISMISSED WITHOUT PREJUDICE**.

¹ Judge Randon recommends that Mayfield be given until October 14, 2013 to file his motion to amend. The Court will adopt Judge Randon's report, but Mayfield will be given an additional 7 days with which to comply.

It is further **ORDERED** that Mayfield is **DIRECTED** to file a motion to amend his complaint, with a proposed complaint attached, on or before **October 21, 2013**. If Mayfield fails to do so, the claims that have been dismissed without prejudice will be dismissed with prejudice.

Dated: September 25, 2013

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon Charles Mayfield #127467 at G. Robert Cotton Correctional Facility, 3500 N. Elm Road, Jackson, MI 49201 by first class U.S. mail on September 25, 2013.

s/Tracy A. Jacobs
TRACY A. JACOBS